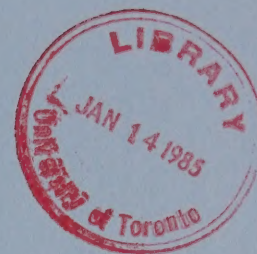


CAI
MT 76
-A66



Government
Publications

3 1761 11637710 2



NATIONAL ENERGY BOARD REASONS FOR DECISION

In the Matter of the Application
Under Sections 11 and 12 of the
National Energy Board Act

of

Shell Canada Limited

December 1984

NATIONAL ENERGY BOARD
REASONS FOR DECISION

In the Matter of the Application
Under Sections 11 and 12 of the
National Energy Board Act

of

SHELL CANADA LIMITED

December 1984

© Minister of Supply and Services Canada 1984

Cat. No. NE 22-1/1984-24E

ISBN 0-662-13672-1

This report is published separately
in both official languages.

Copies are available on request from:

Secretariat
National Energy Board
473 Albert Street
Ottawa, Canada
K1A 0E5
(613) 992-3972

Ce rapport est publié séparément
dans les deux langues officielles.

Exemplaires disponibles auprès du:

Secrétariat
Office national de l'énergie
473, rue Albert
Ottawa (Canada)
K1A 0E5
(613) 992-3972

Printed in Canada

Imprimé au Canada

TABLE OF CONTENTS

Page

RECITAL AND APPEARANCES

(ii)

1.	BACKGROUND	1
2.	THE APPLICATION	3
3.	DECISION	5
3.1	Jet A	5
3.2	Jet B	8
4.	DISPOSITION	9

APPENDICES

I	Hearing Order No. MH-2-84
II	Procedural Order No. PO-1-MH-2-84

RECITAL AND APPEARANCES

IN THE MATTER OF the National Energy Board
Act and the Regulations made thereunder; and

IN THE MATTER OF an application by Shell
Canada Limited (hereinafter called "Shell")
for Orders under sections 11 and 12 of the
Act against Air Canada, Nordair Ltd.,
Québecair, and Pacific Western Airlines
Ltd., filed with the Board under File No.
1748-13-6.

HEARD in Hull, Quebec on 23 and 24 October 1984

BEFORE:

J.R. Hardie	)	Presiding Member
A.D. Hunt	)	Member
J.R. Jenkins	)	Member

APPEARANCES:

M. Davison	)	Shell Canada Limited
C.K. Boggs)	
R.S. O'Brien	)	Air Canada
J. Drapeau)	
F. Dolan)	
R.S. O'Brien	)	Nordair Ltd.
F. Dolan)	
P.C. Wallis	)	Pacific Western Airlines Ltd.
J. Bourque	)	Québecair
N.D. Mullins	)	Canadian Pacific Airlines Limited
P. Richardson	)	Foreign Air Carriers
	)	Air France
	)	Alitalia
	)	British Airways

(iii)

	)	British West Indies Airways
	)	CSA Czech
	)	Eastern
	)	El Al
	)	Finnair
	)	Iberia
	)	KLM Royal Dutch Airlines
	)	Lufthansa
	)	Qantas
	)	Sabena
M. Barrack	)	Gulf Canada Limited
W. Prueter)	
J. Konrads)	
F. Richmond	)	Petro-Canada Products Inc.
A. Peneycad)	
P. Lauwers)	
M. Phelan	)	Wardair Canada Inc.
A.R. Macdonald	)	National Energy Board

Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116377102>

Chapter 1

Background

On 1 May 1981, the National Energy Board Part VI Regulations, made under the National Energy Board Act, were amended to discontinue the existing exemption from the export licensing provisions of the Act of certain types of oil exported in the tanks of aircraft for their own consumption. After the amendment, the relevant part of the then section 24 of the Regulations read as follows:

- "(2) Any person may, without a licence, export any oil carried by motor vehicles, aircraft, locomotives and ships in their own tanks or bunkers, for their consumption, except
- (a) aviation fuels commercially known as Jet A or Jet B, acquired in Canada and carried by aircrafts engaged in international transportation; or ..."

As of the same date, the Board commenced issuing licences for the export of the fuels referred to in the regulation. Canadian airlines held their own licences for fuel consumed on their international flights, and fuel suppliers, consisting for the most part of the major oil refiners, held licences for the sale of fuel to foreign carriers.

Commencing in February 1982, licences issued to both the Canadian airlines and the fuel suppliers were made subject to a condition imposing a minimum export price, known as the "minimum just and reasonable export price" (the MJRP), applicable to the sale of fuel by the suppliers and to the purchase of fuel by Canadian airlines for consumption on international flights.

On 8 February 1982, the Board notified the industry that, effective in the month of March 1982, licences for the export of such fuel by both Canadian and foreign airlines would be held by the suppliers.

In July 1982, the National Energy Board Act was amended, and by a new subsection 85(2), the Governor in Council acquired the power to prescribe by regulation, in respect of oil or gas the export of which is authorized under the Act, the price at which such oil or gas must be sold or the range of prices within which it must be sold. This power was exercised effective 1 September 1982, when the Export Price (Aviation Fuel) Regulations established a minimum and maximum price for the sale of aviation fuel "commercially known as Jet A or Jet B". Licences issued to fuel suppliers for the export of such fuel after August 1982, contained a condition requiring that the prices be within the range of prices prescribed by the regulation.

Effective 1 May 1983, the Governor in Council amended the National Energy Board Part VI Regulations to restore the former exemption from export licensing of aviation fuel to be consumed on international flights, and amended the Export Price (Aviation Fuel) Regulations to provide that those regulations ceased to have effect on that date.

Chapter 2

The Application

By letter dated 4 May 1984, Shell Canada Limited ("Shell") applied to the Board under sections 11 and 12 of the Act for an order requiring four airlines, Air Canada, Nordair Ltd., Pacific Western Airlines Ltd., and Québecair, to pay to Shell the minimum just and reasonable price required under the Regulations and licence conditions for fuel sold to those airlines. With the application, Shell provided copies of the relevant regulations and licences, and of fuel certificates provided to Shell by the airlines pursuant to regulations under the Income Tax Act, identifying the volumes of fuel purchased by them from Shell that were actually consumed in international flights during the period from February 1982 to April 1983, inclusive.

Shell further provided copies of invoices sent to the airlines in conformance with the export pricing regulations and the licences, charging the difference between the prescribed export price and the prices established under the fuel supply contracts in force between Shell and each of the airlines. These invoices were stated to cover all of the fuel identified by the airlines as having been consumed in international transportation during the relevant period. The amounts invoiced totalled \$11,198,825.72.

Shell alleged in the application that although it has demanded payment of the amounts invoiced, the airlines have refused or neglected to pay.

Sections 11 and 12 of the National Energy Board Act read as follows:

"11. The Board has full and exclusive jurisdiction to inquire into, hear and determine any matter

(a) where it appears to the Board that any person has failed to do any act, matter or thing required to be done by this Act or by any regulation, certificate, licence or permit, or any order or direction made by the Board, or that any person has done or is doing any act, matter or thing contrary to or in violation of this Act, or any such regulation, certificate, licence, permit, order or direction, or

(b) where it appears to the Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any matter, act or thing that by this Act or any such regulation, certificate, licence, permit, order or direction is prohibited, sanctioned or required to be done."

"12. The Board may order and require any person to do, forthwith, or within or at any specified time and in any manner prescribed by the Board so far as it is not inconsistent with this Act, any act, matter or thing that such person is or may be required to do under this Act, or any regulation, certificate, licence or permit, or any order or direction made or given under this Act and may forbid the doing or continuing of any act, matter or thing that is contrary to this Act or any such regulation, certificate, licence, permit, order or direction and, for the purposes of this Act, has full jurisdiction to hear and determine all matters, whether of law or of fact."

The airlines indicated their intention to defend the application, and the Board, after seeking the views of Shell and the airlines, decided that the application should be the subject of a public hearing, in which other suppliers of aviation fuel and other airlines would be permitted to participate. Hearing Order MH-2-84 and Procedural Order PO-1-MH-2-84 are shown in Appendices I and II to these Reasons. Two other suppliers, Gulf Canada Limited and Petro-Canada Products Inc., and two other Canadian airlines, Canadian Pacific Airlines Limited and Wardair Canada Inc., took part. In addition, a group of thirteen foreign airlines was permitted to intervene.

Chapter 3

Decision

The airlines did not contest the accuracy of the amounts invoiced by Shell, and confirmed that the invoices remain unpaid.

The airlines raised a number of issues in defence of the application, ranging from the jurisdiction of the Board to make an order under section 12 against a party other than the holder of a licence under the Act, to the constitutional validity of the Act itself insofar as it purports to authorize interference with the prices established by contract between a fuel supplier and a Canadian airline purchaser for a sale of fuel carried out entirely within a province.

3.1 Jet A

At all relevant times, section 24 of the National Energy Board Part VI Regulations, the relevant part of which is set out in Chapter 1, exempted from the export licensing requirement of the Act all oil exported in the tanks of aircraft for their consumption, except "aviation fuels commercially known as Jet A and Jet B". The licensing requirement in respect of the latter fuels was limited in certain other respects not relevant to this application.

The evidence showed that Shell had applied for and received export licences for the sale of both Jet A and Jet B. The fuel certificates provided to Shell by the airlines indicate that the bulk of the fuel that is the subject of this application was sold under the Jet A licences. It was strongly contended by the airlines, supported by Petro-Canada, that the fuel actually sold under these licences was of a type designated as "Jet A-1", and that such fuel is not "commercially known as Jet A...". It was therefore argued that the fuel in question was exempted from export control by the regulations, that the licences issued for its sale were invalid and of no effect, and that accordingly the price conditions contained in the licences, and the Export Price (Aviation Fuel) Regulations which also applied to "Jet A and Jet B", were of no application.

Evidence on this point was presented by Air Canada, by Nordair, and by Shell. Air Canada stated that there are two main types of aviation turbine fuel: "wide-cut" and "kerosene" fuels. Wide-cut type fuels are more volatile, since they include a gasoline component. The wide-cut fuel used by commercial aircraft in Canada is known as Jet B.

Kerosene-type fuels are relatively less volatile. The Canadian Government Standards Board (CGSB) defines the specifications of three kerosene-type fuels authorized for use by commercial aircraft in Canada: Jet A, Jet A-1, and Jet A-2. Of

these, the only fuel produced in Canada and supplied for use by commercial aircraft in Canada is Jet A-1, while Jet A is the fuel most commonly sold in the United States. The reason for this is the lower freezing point of Jet A-1, Jet A being considered unsuitable for use in the colder temperatures of northern regions except during the summer season.

It is clear from the foregoing that there is a technical difference between Jet A, the commercial name referred to in the regulations, and Jet A-1, which the Board finds is the specific fuel type sold by Shell to the airlines in this case. That finding, however, does not end the matter. Shell stated in evidence that for many years Jet A-1 aviation fuel has been commercially known in Canada as Jet A. Important to the credibility of this statement is the evidence that the fuel identified technically as Jet A for all practical purposes does not exist in Canada, although a standard governing its manufacturing specifications is available.

Shell's witness stated that in informal discussions in regard to jet fuel, "depending on who you are talking to, what airline and depending upon what sort of position you are in, it (Jet A-1) is quite commonly called Jet A, period". He further stated that in internal documents within the company, Jet A-1 fuel is most commonly referred to as "turbine fuel", but is also described as "Jet A". He also stated his belief that the term "commercially known as Jet A", when used in export licences, covered Jet A-1 fuel.

However the witness was forced to admit that the distinction between Jet A and Jet A-1 is critical to an airline, since use of the former fuel is not permitted in Canada at certain times of the year. For this reason, all written documentation relating to the sale of such fuel, including contracts and invoices, invariably specifies Jet A-1. The CGSB standard for these fuels requires that tanks and trucks used for Jet A, Jet A-1 or Jet A-2 fuel be clearly marked as to their content. A booklet published by Shell for commercial purposes which describes various aviation-related products, the Aeroshell Book, identifies Jet A and Jet A-1 as separate fuels available from Shell.

Witnesses for Nordair stated that Jet A-1 fuel has never been commercially known as Jet A.

In the Board's view, the intent of the regulation is clear. Both kerosene-type and wide-cut jet fuels are sold in Canada under a number of different designations. The use of the single term Jet A, a kerosene-type fuel, in conjunction with the term Jet B, a wide-cut fuel, indicates the use of these terms in a generic sense to represent all fuels in those categories. This intention is inescapable when it is recognized that Jet A fuel as such is not sold in Canada. The Governor in Council could hardly have intended to apply export controls to a commodity not traded in Canada. Nevertheless, the question before the Board is whether

the wording of the regulation can properly be construed as carrying out that intention. In this case, the Board must apply the principle that when technical words are used, they must be construed in accordance with the meaning they bear within the industry or trade to which the legislation applies: Mohandar Singh v. The King [1950] A.C. 345.

In the Board's view, greater weight is to be attributed to the evidence of Shell's witness and of Mr. De Jean of Nordair, who are engaged in the sale and purchase of aviation fuel, than to that of the remaining witnesses whose expertise is in the technical aspects of these fuels. The evidence suggests that since Jet A as such is not produced and sold in Canada, the use of the term "Jet A" to describe Jet A-1 fuel in discussing a sale of fuel for use in Canada would not lead to confusion. The Board accepts the evidence that such references do in fact occur. However it is also clear that the distinction between the fuels is an important one, and that when contract negotiations are reduced to writing, the terms are never used interchangeably. It is significant that Shell's commercial publications differentiate Jet A from Jet A-1, implying that Shell would produce Jet A if asked to do so.

In the Board's view, to find that Jet A-1 is commercially known as Jet A would require that the terms could be used interchangeably in all phases of a commercial transaction, including the contract documents. If the regulation had used the words "commonly known as" rather than "commercially known as", it might have been possible to find that Jet A-1 was included. However the Board finds that it is not possible to construe the regulation as applying export control to Jet A-1 without attributing to the words a meaning that they do not bear within the industry. Since the term "Jet A" is not used for all commercial purposes in a generic sense to represent the family of kerosene fuels, the evidence intent of the regulation has not been successfully implemented by the words used. For these reasons, the Board concludes that Jet A-1 fuel was at all material times exempt from the licensing provisions of the Act, and that the conditions attaching to the licences held by Shell have no application to that fuel. Since the Export Price (Aviation Fuel) Regulations employ the same terminology, those regulations also have no application to Jet A-1.

The Board comes to that conclusion very reluctantly. The terminology in question appeared in the regulations in May 1981, and was used prior to that in advising the industry of the government policy that the regulation represented. Prior to March 1982, the airlines applied for and held licences for the export of this fuel, in many cases using the terminology of the regulation. The Board believes that the industry understood the policy that underlay the regulation. Not until August 1983 was any question raised as to the applicability of the regulation to the fuel being consumed.

In the result, the Board finds that since the licence conditions and the Export Price (Aviation Fuel) Regulations apply to the fuel known as Jet A, and do not apply to the Jet A-1 fuel sold by Shell to the airlines, there is no basis to the Shell application as it pertains to that fuel. The application in respect of that fuel must therefore be dismissed.

3.2 Jet B

Apart from the Jet A-1 fuel discussed in the preceding section, Shell's application appears to encompass sales of Jet B aviation fuel to Nordair, Québecair and Pacific Western. Shell held licences for the sale of this fuel to those airlines. The fuel certificates provided by Pacific Western appear to indicate sales of a quantity of that fuel. While the Québecair fuel certificates do not specify the type of fuel, they would appear to indicate sales of Jet B, since no licences for the sale of Jet A to Québecair were included in the application.

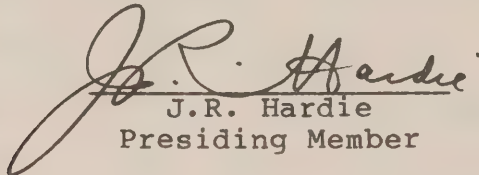
No party argued that the fuel delivered under those licences was different from the fuel described in the regulations and licences.

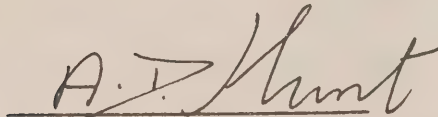
In support of its application Shell filed a number of invoices sent to the airlines that Shell alleges remain unpaid. Those invoices expressly refer to sales of Jet A-1, and there is no invoice indicating an amount owing in respect of Jet B. There is therefore no evidence before the Board that any amount remains unpaid in respect of sales of Jet B, and the Board must assume that no order is required in respect of such sales.

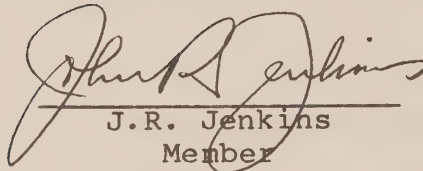
Chapter 4

Disposition

For the reasons given, the application is dismissed. If any amounts remain unpaid in respect of sales of Jet B, Shell is at liberty to re-apply, providing evidence of the amounts invoiced. Under the circumstances, it is unnecessary for the Board to decide other issues argued in relation to this application.


J.R. Hardie
Presiding Member


A.D. Hunt
Member


J.R. Jenkins
Member

ORDER NO. MH-2-84

IN THE MATTER OF the National Energy Board Act
and the Regulations made thereunder;

AND IN THE MATTER OF an application made by
Shell Canada Limited (hereinafter called
"Shell") for Orders under sections 11 and 12 of
the Act against Air Canada, Nordair Ltd.,
Quebecair, and Pacific Western Airlines Ltd.,
filed with the Board under File No. 1748-13-6.

B E F O R E the Board on Tuesday, 4 September 1984.

WHEREAS Shell has filed with the Board an application
dated 4 May 1984 seeking Orders under sections 11 and 12 of the
Act requiring Air Canada, Nordair Ltd., Quebecair and Pacific
Western Airlines Ltd. (hereinafter collectively called "the
airlines") to pay to Shell certain moneys invoiced by Shell in
relation to sales of aviation turbine fuel to the airlines during
the period February 1982 to April 1983 for use in international
transportation;

AND WHEREAS Shell alleges that the said invoices were
issued in conformance with the terms and conditions of export
licences issued by the Board for the sale of such fuel, and in
conformance with the Export Price (Aviation Fuel) Regulations;

AND WHEREAS Shell alleges that the airlines have refused
to pay the moneys invoiced, and are thus in violation of the
export licences and of the Regulations;

AND WHEREAS to export other than in accordance with the
terms of a licence or the Regulations would constitute a breach of
the provisions of the National Energy Board Act;

AND WHEREAS the Board is of the view that the application should be the subject of a hearing open to all interested parties;

AND WHEREAS the airlines have raised certain questions as to the jurisdiction of the Board to make the Orders sought;

IT IS ORDERED THAT:

Hearing

1. The application will be heard by the Board at a hearing commencing at 9:30 a.m. on Tuesday, 23 October, 1984, in the Hearing Room of the Board, 473 Albert Street, Ottawa, Ontario.

2. The hearing will be conducted in either of the two official languages, and simultaneous interpretation will be provided should any party to the proceeding request such service in his Reply or Intervention.

Service of application

3. Shell shall, as soon as possible but not later than 14 September 1984, serve one copy of its application and of this Order on each party listed in Appendix 1 to this Order that has not already been served with a copy of the application.

Reply and intervention

4. Each of the airlines shall, on or before 28 September 1984, file with the Board 20 copies and serve on Shell one copy of a Defence which:

(a) may admit or deny any or all of the facts alleged in the application;

(b) shall assert the facts to be proved in evidence in its defence;

- (c) shall state the official language in which the airline wishes to be heard; and
- (d) shall be endorsed with the name and address of the airline or its solicitor, to whom communications may be sent.

5. Any person served pursuant to paragraph 3 who wishes to intervene in this application shall, on or before 28 September 1984, file with the Board 20 copies, and serve on Shell and on each of the airlines one copy of a Notice of Intervention which:

- (a) shall state whether the party supports or opposes the application, and the grounds therefor;
- (b) may admit or deny any or all of the facts alleged in the application;
- (c) shall state any facts the party wishes to prove in evidence;
- (d) shall state the official language in which the party wishes to be heard; and
- (e) shall be endorsed with the name and address of the party or his solicitor, to whom communications may be sent.

6. Immediately upon receipt of an intervention referred to in paragraph 5, each of the airlines shall serve one copy of its Defence upon the intervenor at the address shown in the intervention.

7. Any party that files an intervention after 28 September 1984 must file and serve a Notice of Motion requesting leave to submit a late intervention. Such notice shall be filed and served in accordance with paragraph 13 of this Order.

8. If Shell wishes to reply to any issue of fact stated in the Defence of an airline or in an intervention, Shell shall, on or before 8 October 1984, file with the Board 20 copies and serve on each airline and on each party that has intervened pursuant to paragraph 5 one copy of a Reply identifying the issues to be disputed and stating the facts to be proven in contravention thereof.

Direct evidence

9. Shell shall prepare the direct evidence of each witness that it intends to produce, in written question and answer form with lines numbered (hereinafter called "written direct evidence") and shall, on or before 8 October 1984, file 20 copies with the Board and serve one copy on each airline and on each party that has intervened pursuant to paragraph 5.

10. Each airline and each party that has intervened pursuant to paragraph 5, shall prepare written direct evidence for each witness it intends to produce and shall, on or before 15 October 1984, file 20 copies with the Board and serve one copy on Shell and on each other airline and party that has intervened pursuant to paragraph 5.

Reference to Federal Court

11. The Board has under consideration the possibility of a reference to the Federal Court of Appeal under subsection 28(4) of the Federal Court Act of questions of law or jurisdiction arising in connection with this application, and wishes all parties to be prepared to make submissions at the hearing on:

- (a) the desirability of such a reference;
- (b) the timing of such a reference; and
- (c) the questions that should be referred.

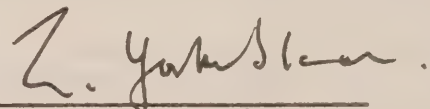
General

12. Shell, the airlines, and each party that has intervened pursuant to paragraph 5 shall file, at or prior to the commencement of the hearing, two copies of proof of service in accordance with the applicable paragraphs 3, 4, 5, 6 and 8 of this Order, and two copies of its application, defence, reply, intervention, and written direct evidence.

13. If any question arises upon which a decision of the Board may be required, 20 copies of a Notice of Motion with respect thereto shall be filed with the Board and one copy served upon each party to the proceeding, and the motion will be heard by the Board in accordance with the procedure determined by it.

DATED at Ottawa, Ontario, 4 September 1984.

NATIONAL ENERGY BOARD,



G. Yorke Slader,
Secretary

Edward Lakusta
President & Chief Oper. Officer
Petro-Canada Products Inc.
1 Place Ville Marie
Montreal, P.Q.
H3B 4A9

John P. McIntyre
President
Chevron Canada Limited
1500-1050 West Pender Street
Vancouver, British Columbia
V6E 3T4

Gulf Canada Limited
c/o McCarthy & McCarthy
Barristers & Solicitors
P.O. Box 48
Toronto-Dominion Bank Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1E6
Att: Colin L. Campbell

W.A. MacDonald
Vice President
Imperial Oil Limited
55 St. Clair Avenue West
Toronto, Ontario
M5W 2J8

N.D. Mullins
Law Department
Canadian Pacific Airlines Ltd.
Suite 360
601 West Cordova Street
Vancouver, British Columbia
V6B 1G1

Mr. A. Irving
Irving Oil Limited
P.O. Box 1421
Saint John, N.B.
E2L 4K1

Roland M. Routhier
President & Chief Exec. Officer
Texaco Canada Limited
90 Wynford Drive
Don Mills, Ontario
M3C 1X4

Air Canada
c/o Lavery, O'Brien
Barristers and Solicitors
31st Floor,
2 Complexe Desjardins
P.O. Box 156, Place Desjardins
Montreal, Quebec
H5B 1G4
Att: Mr. Robert S. O'Brien

H.R. Steele
President & Chief Exec. Officer
Eastern Provincial Airways (1963) Ltd.
P.O. Box 5001
Gander, Newfoundland
A1V 1W9

André J. Bourque
Vice-President, General Counsel and Secretary
Nordair Ltd.
1320 Graham Blvd.
Ville Mont Royal, Quebec
H3P 3C8

Québécois
a/s Me. J-M Fortier
Guy & Gilbert
Avocats
Place Mercantile
770, rue Sherbrooke ouest
Bureau 2200
Montréal (Québec)
H3A 1G1

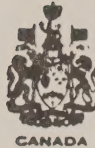
Mr. P.C. Wallis
Vice-President
Law & Government Relations
Pacific Western Airlines Ltd.
Suite 2800
700 - 2nd Street S.W.
Calgary, Alberta
T2P 2W2

Wardair Canada Ltd.
c/o Herridge, Tolmie
Barristers & Solicitors
Patent & Trade Mark Agents
116 Albert Street
Ottawa, Ontario
K1P 5G3
Att: Michael L. Phelan

Worldways Canada Ltd.
6299 Airport Road
2nd Floor
Mississauga, Ontario
L4V 1N3

Attorney General of Canada
Dept. of Justice
Room 539, Justice Bldg.
239 Wellington Street
Ottawa, Ontario
K1A 0H8
Att: Peter K. Doody
Civil Litigation Section

NATIONAL ENERGY BOARD



OFFICE NATIONAL DE L'ÉNERGIE

ORDER NO. PO-1-MH-2-84

IN THE MATTER OF the National Energy Board Act
and the Regulations made thereunder;

AND IN THE MATTER OF an application made by
Shell Canada Limited (hereinafter called
"Shell") for Orders under sections 11 and 12 of
the Act against Air Canada, Nordair Ltd.,
Quebecair, and Pacific Western Airlines Ltd.,
filed with the Board under File No. 1748-13-6.

B E F O R E the Board on Friday, 12 October 1984.

WHEREAS Shell's application to the Board was
accompanied by an affidavit to which was attached supporting
documentation;

AND WHEREAS by Order No. MH-2-84 Shell was required to
serve its written direct evidence on each airline and on each
intervenor on or before 8 October 1984;

AND WHEREAS by letter dated 27 September 1984 Wardair
Canada Inc. states that it has not received the affidavit and
supporting documentation;

AND WHEREAS the written direct evidence filed by Shell
with the Board on 4 October 1984 incorporates by reference the
said affidavit and supporting documentation;

AND WHEREAS it appears that Shell has not fully
complied with paragraph 9 of order No. MH-2-84.

IT IS ORDERED THAT:

1. Shell shall immediately ascertain the airlines and
parties who have intervened pursuant to paragraph 5 of Order No.
MH-2-84 who have not yet been served with the affidavit and
supporting documentation, and shall as soon as possible serve a

copy of the affidavit and supporting documentation on those airlines and intervenors, by courier or by personal service.

2. Shell shall file at the commencement of the hearing proof by affidavit of its compliance with paragraph 9 of Order No. MH-2-84 and with this Order.

NATIONAL ENERGY BOARD,

for Sam Melzer
G. Yorke Slader,
Secretary

